

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 445 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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G.Y.RAMEKAR - Appellant

Versus

SURESH BABURAO VICHARE & 1 - Opponent(s)

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Appearance :

MR MANISH UPADHYAY FOR PRANAV G DESAI for Petitioner.

MR ATUL H MEHTA for Respondent No: 1.

MR. K.C. SHAH, LD. APP FOR Respondent No: 2

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 12/08/2005

ORAL JUDGMENT

1.The Baroda Municipal Corporation through its Food Inspector preferred the present appeal under section

378 of the Code of Criminal Procedure, 1973, challenging the order of acquittal dated 30-4-1991 passed in Criminal Case No. 344 of 1988, acquitting the accused - present Respondent No.1 of the charges under section 2 (1A), 7, and 16 of the provisions of Prevention of Food Adulteration Act, 1954 (herein after referred to as the 'Act'). This Court vide order dated 20-4-1995 has granted leave and admitted the appeal and it was fixed for hearing in the first week of October, 1995.

2.The case of the appellant in short is that the original complainant Food Inspector, on 16-9-1987 at around 12.00 O' clock visited shop of the accused when the accused himself was present in the shop. The complainant purchased 600 grams of black pepper for the purpose of analysis after making payment of Rs.60=00 towards its price. The necessary notice under Rule-12 was issued whereon the signature of the vendor and the panch were obtained. The sample food article was divided in to 3 equal parts and collected in glass bottles as required under the law. The glass bottles were thereafter closed with air tight lid and sealed in accordance with law. The panchnama was drawn right

there which is at exhibit-12. One portion of the sample food article was sent to Public Analyst and the remaining 2 parts were sent to the Local Health Authority strictly in accordance with the provisions of law by sending separate memorandum and seal impression. On receipt of the report of Public Analyst indicating that the food article was adulterated, necessary consent was obtained from Local Health Authority for lodging complaint against the accused. The complaint came to be lodged on 11-1-1988. The charges came to be framed and the case had proceeded further. The requisite notice under section 13(2) was also issued to the accused informing him that he had a right to request the court for having the sample further analysed by the Central Food Laboratory. After taking necessary evidence, documentary and oral, the trial court framed 3 issues; namely (1) whether the prosecution has proved beyond doubt that the sample of black petter was not in conformity with the standards laid down under the provisions of Rules 1955 ?; (2) whether the consent order at exhibit-24 is legal ?; (3) what order ?.

The learned trial court has answered the first

issue in affirmative, second issue in negative and the third issue as per the order.

3.The trial court has come to the conclusion that as the consent order at exhibit-24 was not in conformity with the provision of section 20(1) of the Act the same was not legal and therefore the case of the prosecution stood vitiated and acquitted the accused of the charges under the impugned order dated 30-4-1991.

4. Shri. Manish Upadhyay for Shri. Pranav Desai, learned counsel for the appellant has submitted that the reasoning adopted by the trial court for holding that the consent order at exhibit-24 was illegal, is untenable in eye of law. He invited this Court's attention to the consent order at exhibit-24 which in terms contained the satisfaction of the authority about the requirement of lodging prosecution. He submitted that the tenor of the consent order at exhibit-24 go to show that the same was absolutely in conformity with the requirement of section 20(1) of the Act, and hence the finding of the trial court deserves to be reversed on account of it being

erroneous. Shri. Upadhyay has further submitted that as the finding in respect of adulteration is in affirmative and as the consent order is also in accordance with law the order of acquittal dated 30-4-1991 deserves to be quashed and set aside and as the adulteration is proved by the evidence in the form of Public Analyst's report, the accused be convicted and be visited with appropriate punishment under the Act. Shri. Upadhyay has relied upon Apex Court's ruling in case of SURESH H. RAJPUT & ORS Vs. BHARTIBEN PRAVINBHAI SONI & ORS, reported in (1996) 7 SCC pg. 199 in support of his contention that the consent order at exhibit-24 was absolutely proper just and legal. Shri. Upadhyay has relied upon the observations of the Apex Court in para-12.

5. Shri. Mehta, learned counsel appearing on behalf of the respondent - original accused submitted that the impugned order dated 30-4-1991 deserves to be maintained as the evidence adduced by the prosecution would clearly show that the entire case of the prosecution suffer from serious infirmities rendering the prosecution vitiated which should result into the logical conclusion of acquittal. Shri. Mehta has

submitted that this being an acquittal appeal the respondent - original accused may be permitted to rely upon and urge the infirmities and grounds in support of the order of acquittal which are different than the one adopted by the trial court. Shri. Mehta could not effectively resist the submission of Shri. Upadhyay that the consent order was in fact legal and valid in view of the observations of the Apex Court in case of Suresh H. Rajput (supra). Shri. Mehta has invited this Court's attention to the testimony of the complainant to show that the prosecution has failed in establishing beyond doubt compliance with mandatory provisions of Rule 14 of Prevention of Food Adulteration Rules, 1955 (herein after referred to as the 'Rules'). Shri. Mehta has relied upon the decision of this Court in case of VASANTRAY J. KHAMKATI vs. STATE OF GUJARAT & ANR, reported in 2003 (4) G.L.R. pg. 3013, wherein this Court had held that in absence of evidence indicating the fact that bottles were cleaned and dried accused was entitled to acquittal. Shri. Mehta has also relied upon a decision of this Court in case of GANGADHAR YASHVANT RAMEKAR Vs. MUKESHBHAI B. SHAH & ORS, reported in 1999 (2) G.L.R. pg. 1105, wherein also this Court has

held that when there was evidence of the complainant indicating that he had no personal knowledge that the bottles were cleaned and dried and when the bottles were shown to panch the cork was closed, the accused was entitled to acquittal. Shri. Mehta has submitted that the prosecution has failed in leading any positive evidence to establish due compliance with mandatory provisions of section 14 and in view of this the order of acquittal dated 30-4-1991 deserves to be upheld.

6. This Court has examined the evidence on record and heard the counsels of the respective parties at length. The contention of Shri. Mehta that the respondent accused has right to rely upon and urge different grounds for supporting the order of acquittal than those which were originally relied upon by the trial court could not effectively be controverted by Shri. Upadhyay. The contention of Shri. Upadhyay in respect of the consent order being legal deserves acceptance in view of the observations and ratio of the Apex Court in case of Suresh H. Rajput (supra). In view of this, the findings of the trial court in respect of consent order at exhibit-24

deserves to be reversed as the consent order is held to be legal and valid.

7. The next contention of Shri. Mehta is that the order of acquittal need not call for any interference in view of the fact that the prosecution has failed in establishing beyond doubt due compliance with mandatory provisions of Rule 14 of the Rules, 1955. The testimony of the complainant indicates the following :-

* The complainant had purchased black pepper from the stock of black pepper kept in a square tightly closed tin container.

* The complainant has admitted that the black pepper sample food article was collected initially in a polythene bag, thereafter same was transferred into the glass bottles. The complainant has in terms stated that he is unable to say whether there were insects or fungus growth in the container wherefrom the sample food article was collected.

* Complainant has admitted in his testimony that

he can not say as to when the glass bottles were cleaned.

* Complainant has accepted in terms that when the sample food article was collected it was monsoon and because of monsoon season the content of moisture was there, humidity was everywhere. He admits that due to this reason also food article may develop fungal growth.

8. Against the backdrop of the testimony of the complainant the report of Public Analyst deserves to be examined. The report of the Public Analyst is at exhibit-22 which indicates that the brown black wrinkled surface of dried berries having white patches on the surface. It was also reported that it smelt stale and under microscopic observation it was detected that it had heavy mould & fungus growth on the surface of berries and mucor was also detected. This results are basis for opinion of the Public Analyst that the subject food sample was not in conformity with the Prevention of Food Adulteration Act and Rules. The suggestions made by the defence which have not been explained or

controverted by the prosecution that the moisture was very much present in the atmosphere due to monsoon season and the bottles could not be said to be cleaned in presence of either the complainant or that the complainant had any knowledge as to when they were cleaned, would be sufficient to raise doubt about its cleanliness and the possibility of detection of fungus growth can not be ruled out on this count. Therefore, the benefit of doubt deserves to be accorded to the accused for sustaining the order of acquittal.

9. In the result this Court comes to the conclusion that the impugned order dated 30-4-1991 passed in Criminal Case No. 344 of 1988 does not call for any interference in this acquittal appeal, though this Court may not be in complete agreement with the reasoning adopted by the trial court. The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

